

JUDICIAL COMMITTEE OF THE
IN THE/PRIVY COUNCIL

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No. 20 of 1975

ON APPEAL FROM

THE COURT OF CRIMINAL APPEAL IN THE REPUBLIC OF SINGAPORE

B E T W E E N :- MOH'D YASIN BIN HUSSIN @ ROSLI
Appellant

- and -

THE PUBLIC PROSECUTOR
Respondent

C A S E F O R T H E R E S P O N D E N T

- 10 1. This is an appeal from a judgment and order of the Court of Criminal Appeal of the Republic of Singapore (Wee Chong Hin, C.J., Kulasekaram and Tan AR Tah, JJ.), given and made the 4th November, 1974, dismissing the appeal of the Appellant from his conviction in the High Court of Singapore (Winslow and Choor Singh, JJ.) on the 15th March, 1974. Record
pp.82 - 90
- 20 2. The Appellant was charged with one Hurun bin Rifin, that, between 10 p.m. on the 22nd April and 9.30 a.m. on the 23rd April, 1972, in furtherance of the common intention of them both, they committed murder by causing the death of one Poon Sai Im, thereby committing an offence punishable under Section 302 read with Section 34 of the Penal Code of Singapore, Hurun bin Rifin was acquitted of the charge but was convicted of the offence of robbery by night contrary to Section 392 of the Penal Code. The Appellant was convicted of murder, contrary to Section 302 of the Penal Code, and was sentenced to death. p.61
- 30 3. The relevant statutory provisions are set out in an appendix to this Case. (The Singapore Penal Code follows the Indian Penal Code). p.60
- 40 4. The deceased (a woman) was, according to the autopsy report, 58 years of age, 150 cms. (4 feet 11 inches) in height and 56,300 grammes (8 stone 12 pounds) in weight. She lived alone, near the sea-shore, on a small island, in a hut which, in addition to affording living accommodation, was also a small shop. The case for the prosecution was that the Appellant and Hurun bin Rifin had

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gone to the hut, by night, with intent to rob; that they had so robbed; and, that in the course of the robbery, they had murdered the deceased. The body of the deceased was found floating in the sea at about 9.30 a.m. on the 23rd April, 1972. It was naked save for a blouse and a string around the waist. The blouse had five button spaces, but only one half button was in place at the top. Bare threads suggested that the missing buttons had been torn away. Buttons, an ear-ring, and hair clips were found on the floor of the kitchen of the hut. The learned trial Judges concluded that the deceased had been killed by the Appellant, evidently in the kitchen of the hut, not in furtherance of robbery, but in furtherance of an intention to rape the deceased. Further, that while this was going on, Hurun bin Rifin was ransacking another room and had no part in the killing.

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5. Evidence was given for the prosecution, inter alia as follows :-

a) A statement made to a magistrate by Hurun bin Rifin on the 11th February, 1973, was read.

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b) A statement made to a magistrate by the Appellant also on the 11th February, 1973 was read. The Appellant said he had gone to the house of the deceased with Hurun bin Rifin. The house was closed and silent and the lights dimmed. They could find no way in, so the Appellant went to a chicken coop and disturbed the chickens. The noise made by the chickens awoke the deceased, who came out. Immediately she opened the door Hurun jumped at her and grabbed her. The Appellant then took over and Hurun entered the room. The deceased put up a fight. The Appellant hit her but had no intention of killing her. While the Appellant was warding off the attacks of the deceased, her trousers accidentally slipped off. This aroused the Appellant's desires and he had intercourse with the deceased. During intercourse the deceased fell silent. When Hurun emerged from ransacking the room they together carried the deceased to the sampan in which they had come to the spot, and, on the journey back, they had thrown the body into the sea.

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c) Dr. Chao Tzee Ching said he was a consultant forensic pathologist. On the 24th April, 1973, he had performed the autopsy on the deceased. His report listed the injuries he had found. He estimated the time of death as around midnight

p.4, 1.24

p.4, 1.36

p.4, 1.40

p.5, 1.1

p.6, 1.6

p.7, 1.12

on the 22nd April, 1973. Of the 15 external injuries he had listed, Nos.14 and 15 were inflicted after death. Nos.12 and 13 were finger-tip marks on the knees, consistent with forcing the legs of the deceased apart. Nos. 1 to 8 were consistent with being caused by a blunt object, such as a fist. Nos.9 and 10 were consistent with the deceased putting up her arms to ward off blows. Nine ribs were fractured, four on one side and five on the other, the fractures being more or less in straight lines from the centre of the collar-bones. Externally, on the chest, there were no injuries. The fractures were consistent with someone compressing the chest by sitting on it with force. The lungs were congested, but there was no excessive fluid present. The fractures would, in the ordinary course of nature, cause death independently of the other injuries. Taking age into consideration, death would either have been instantaneous with the fracturing, or within one or two minutes thereafter. The cause of death was cardiac arrest resulting from the pain and shock of the fracturing. The likelihood was that all the fractures occurred simultaneously. They were not caused by someone stepping or stamping on the chest, but with sitting on it, either once with force or several times. It was not likely that the thirteen external injuries inflicted before death would cause death.

p.8, 1.18
p.9, 1.14
p.10, 1.31
p.10, 1.44
p.11, 1.14
p.13, 1.14
p.14, 1.10
p.16, 1.4
p.17, 1.20
p.18, 1.14
p.20. 1.8

6. At the close of the case for the prosecution it was submitted, on behalf of the Appellant, that no case had been made out for him to answer. It was submitted that the prosecution must establish intention; that the confessions showed an intention to rob, but not to kill or alternatively to cause any injury which in the ordinary course of nature would have resulted in death; that the case therefore did not come under any of the four limbs of Section 300 of the Penal Code; and that, at worst, the Appellant ought only to be charged with culpable homicide not amounting to murder, under Section 304. Their Lordships rejected this submission. It would appear that they regarded the submission as being founded upon the English law as to intention, not upon intention under Singapore law. They pointed out that under the law of Singapore, if the act that caused death was done deliberately (i.e. not negligently or accidentally) and was sufficient in the ordinary

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p.40, 1.7
p.45, 1.17
p.44, 1.36
p.44, 1.41

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course of nature to cause death, then that was murder. (Counsel for the prosecution, replying to the submission, referred to Virsa Singh v. State of Punjab (1958) All India Reporter, Supreme Court, p.465. From page 48 line 25 of the Record to page 51 line 6 is not argument, but a verbatim reading from Virsa Singh's Case).

7. Hurun bin Rifin, the first accused, made a statement from the dock. His statement was substantially the same as the one he made to the Magistrate on the 11th February 1973. He told how he and the Appellant had gone to the deceased's house to rob. They could find no entry. The Appellant walked away and he (Hurun) heard fowls making a lot of noise. Then a door opened and a Chinese woman came out. He grabbed her from behind and put a hand over her mouth. She stepped back and fell down. The Appellant then came and tried to shut the woman's mouth with his hand. He, Hurun, then went into the house. It was dark, so he returned to get a torch from the Appellant, then returning to the room where he had been. He took \$40, a ring, and ten packets of cigarettes. When he emerged he saw the woman lying face down. He asked the Appellant what had happened, and the Appellant answered that he had put his hand on the woman's mouth and she had died. He, Hurun, was angry with the Appellant.

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8. The Appellant also made a statement from the dock. As in his statement to the magistrate, he told how he had disturbed the fowls. He heard the voice of a Chinese woman inside the house. The door was opened and he went straight into the house. He saw the woman lying on the ground. He put his hand on her mouth and Hurun went inside. He struggled with the woman and took a torch from her. He hit her with the torch. Hurun came out, took the torch and went back. He (the Appellant) managed to shut her mouth with his hand, and suddenly she was motionless. He saw that she was dead. Hurun came out and wanted to know what had happened to the woman. Hurun wanted to hit him. He told Hurun that he had no intention of killing the woman; he was only preventing her from shouting. He went to the premises to steal and had no intention of killing anyone.

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9. The judgment of the Court was given by Winslow J. His Lordship said the Court was satisfied beyond reasonable doubt that the injury which caused death was inflicted by the Appellant. Their Lordships accepted the evidence of Dr. Chao that this injury was the fracture of nine ribs caused by compression of the

pp. 53/55

p.54, 1.21

pp. 55/58

p.56, 1.37

p.57, 1.26

p.57, 1.34

p.58, 1.7

pp. 59/61

chest with some force. The fractures caused pain and shock which brought about cardiac arrest. The fractures were sufficient to cause death in the ordinary course of nature, independently of other injuries. This injury was intentionally caused by the Appellant, not accidentally. The act of the Appellant therefore fell within the meaning of the third limb of Section 300 of the Penal Code, and was murder. Their Lordships found that there was a common intention to rob, but that the Appellant, while Hurun was in another room, had sexual intercourse with the deceased, after considerable resistance on her part. It seemed therefore that the fatal injury was inflicted, not in furtherance of the common intent to rob, but in furtherance of the Appellant's intention to rape. Their Lordships, not being satisfied that Hurun bin Rifin was guilty of murder, convicted him of robbery by night, contrary to Section 392 of the Penal Code, and sentenced him to 12 years imprisonment and 12 strokes with the cane.

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p.59, 1.22

p.61, 1.26

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p.72. 1.36

p.73, 1.16

p.77, 1.2

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p.77, 1.46
p.77, 1.38

it an irretestable inference that the Appellant inflicted the fatal injury in furtherance of his sexual desires. They found that, in the course of a violent struggle, the Appellant had sat forcibly on the chest of the deceased in order to reduce her to his will. The injury which caused the death of the deceased was one the Appellant intended to inflict, and was sufficient in the ordinary course of nature to cause the death. They therefore convicted the Appellant.

pp. 80/82

11. In his Grounds of Appeal to the Court of Appeal the Appellant asserted, inter alia, that the learned trial Judges erred: in holding that the Appellant had the requisite intention to warrant a conviction for murder; in failing to consider whether Exception 1 of Section 300 (accident) ought not to be invoked; and, in failing to appreciate that the finding of fact as to what caused death was not the "overt act required by Section 300".

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pp. 82/90

p.85, 1.26

p.88, 1.5

p.89, 1.19

12. The Court of Appeal, in their judgment, reviewed the evidence and said the case against each accused depended solely upon the statement each had made to the magistrate. After setting out the statements made by the Appellant to the magistrate and from the dock, their Lordships said there could be no doubt that the only person who laid hands on the deceased was the Appellant. The main contention raised on behalf of the Appellant was that the evidence was insufficient to support a finding that the fatal injury was intentionally caused by the Appellant. It had been argued that the Appellant had used violence with the intention of subduing the deceased so that he could rape her; not with the intention of causing fatal injury. But although the evidence supported this conclusion, it also was sufficient to support the finding that the Appellant intended to inflict the fatal injury. The trial judges found that the fatal injury was neither accidentally nor otherwise unintentionally caused by the Appellant, and in the circumstances it was clear that the subjective test involved in the third limb of Section 300 had been satisfied. If an injury thus inflicted is sufficient in the ordinary course of nature to cause death, and does cause death, then the offence is murder under the said third limb. They dismissed the appeal.

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p.89, 1.34

13. It is respectfully submitted that the learned trial Judges were right in convicting the Appellant of murder, and that the Court of Appeal were right in upholding this conviction. Having decided as a fact (as, on the evidence, the trial Judges were entitled to do) that the Appellant had inflicted the fatal injury upon the deceased, the first question for decision was

as to whether there had been culpable homicide within the meaning of Section 299 of the Penal Code. By necessary inference the learned trial Judges concluded, as, on the evidence, they were entitled to conclude, that the case fell within Section 299. The second question for decision was whether the injury inflicted was sufficient in the ordinary course of nature to cause death within the third limb of Section 300. On the evidence the learned trial Judges were entitled to conclude, and did conclude, and were found by the Court of Appeal to have been right in concluding, that the injury was so sufficient.

14. If, contrary to the Respondent's submission, the Court of Appeal erred in holding that the case fell within the third limb of Section 300 and if it be found that the case does not fall under any other limb of Section 300, then, (whether or no the case falls under any Exception to Section 300) it is respectfully submitted that the case nevertheless was one of culpable homicide within Section 299, and ought to be remitted to the learned trial Judges, if still in office, and if not, to the Court of Appeal, with directions to consider whether such culpable homicide falls within Section 304 (a) or (b), and to convict and sentence accordingly.

15. If, contrary to the Respondent's submission, the case is neither murder nor culpable homicide not amounting to murder, then, it is respectfully submitted, it is causing death by rash or negligent act, within Section 304A and the Appellant ought to be convicted thereof and the case ought to be remitted to the learned trial Judges, or the Court of Appeal as aforesaid, with a direction to pass the appropriate sentences. Further and in any event, if the case be not one of murder, then on the facts as found by the learned trial Judges, the Appellant was guilty of the offence of robbery by night, contrary to Section 392 of the Penal Code, and the Appellant ought to be convicted thereof and the case ought to be remitted to the trial Judges, or the Court of Appeal as aforesaid, with a direction to pass the appropriate sentence.

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16. The Respondent respectfully submits that the Appellant's conviction should be upheld and this appeal dismissed, for the following among other

R E A S O N S

- (1) BECAUSE the Appellant had committed an act constituting murder under the law of Singapore
- (2) BECAUSE the learned trial Judges were right to convict and the Court of Appeal right to uphold the conviction, both for the reasons they gave.

GERALD DAVIES

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A P P E N D I X

The Penal Code of Singapore

Section 34. "When a criminal act is done by several persons, in furtherance of the common intention of them all, each of such persons is liable for that act in the same manner as if the act were done by him alone."

Section 299. "Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

Section 300. "Except in the cases hereinafter excepted culpable homicide is murder -

- (a) if the act by which the death is caused is done with the intention of causing death; or
- (b) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or
- (c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
- (d) if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid."

Exception 1 "Culpable homicide is not murder if the offender whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or caused the death of any other person by mistake or accident."

Exception 2 (right of private defence exceeded, but in good faith).

Exception 3 (public servant, acting for advancement of justice, exceeding his rights, but in good faith)

Exception 4 (sudden fight in heat of passion and without pre-meditation)

Exception 5 (deceased, being over eighteen, consents or takes risk with consent)

Exception 6 (infanticide)

Exception 7 (mental responsibility substantially impaired by abnormality of mind)

Section 301. "If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause."

Section 302. "Whoever commits murder shall be punished with death".

There is no Section 303.

Section 304. "Whoever commits culpable homicide not amounting to murder shall be punished -

(a) with imprisonment for life, or imprisonment for a term which may extend to ten years, and shall also be liable to fine, if the act by which death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or

(b) with imprisonment for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

Section 304A. "Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both."

Criminal Procedure Code

Section 168 (2) "When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he is not charged with it."

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- and -

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